

September 19, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Antidumping Duty Order on Fresh Garlic from the People's
Republic of China: Issues and Decision Memorandum for the
Twelfth New Shipper Reviews

SUMMARY:

We have analyzed the comments submitted in the new shipper reviews ("NSRs") of fresh garlic from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the Preliminary Results.¹ We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in these NSRs for which we received comments on the *Preliminary Results*:

Comment 1: *Bona Fide* Analysis of Chenhe's Sale

Comment 2: Intermediate Input Methodology

Comment 3: Surrogate Financial Ratios

Comment 4: Garlic Bulb Surrogate Value

Comment 5: Mesh Bags

Comment 6: Containerization

BACKGROUND:

The period of review ("POR") is November 1, 2006, through April 30, 2007. The Department of Commerce (the "Department") conducted a verification of Shandong Chenhe International Trading Co., Ltd. ("Chenhe") from May 12-14, 2008.² The Department conducted a verification

¹ See *Fresh Garlic from the People's Republic of China: Preliminary Results of the 12th New Shipper Reviews*, 73 FR 24042 (May 1, 2008) ("*Preliminary Results*").

of Jining Yongjia Trade Co., Ltd. (“Yongjia”) and its supplier Jinxiang County Shanfu Frozen Co. Ltd. (“Shanfu”) from May 15-18, 2008.³

In accordance with section 351.309(c)(i) of the Department’s regulations, we invited parties to comment on our *Preliminary Results*. The Department received case briefs from Yongjia, Chenhe, and the Petitioners,⁴ and received rebuttal briefs from Chenhe. Additionally, the Department placed data from U.S. Customs and Border Protection (“CBP”) on the record of this proceeding on August 29, 2008, and invited parties to submit comments. The Department received comments on this CBP data from Chenhe on September 3, 2008, and from the Petitioners on September 4, 2008. Both parties also submitted rebuttal comments regarding this CBP data on September 8, 2008.

The specific calculation changes for the Respondents⁵ can be found in company-specific analysis memoranda.

CHANGES SINCE THE *PRELIMINARY RESULTS*:

Since the publication of the *Preliminary Results*, the Department has updated its regression-based wage rate for the PRC. Accordingly, the updated wage rate will be used in these final results. See <http://ia.ita.doc.gov/wages/05wages/05wages-051608.html>; see also *Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008). In addition, the Department has rescinded its review of Chenhe based on its determination that Chenhe’s sale was not *bona fide*. Finally, we have changed the placement of mesh bags in the Respondents’ normal value calculation. See Comment 5, below.

DISCUSSION OF THE ISSUES:

Comment 1: Bona Fide Analysis of Chenhe’s Sale

Background

In conducting a review, particularly a review where a company’s margin would be based on a single sale, the Department examines price, quantity, and other circumstances associated with the sale under review, and must determine if the sale was based on normal commercial considerations and presents an accurate representation of the company’s normal business practices. If the Department determines that the price was not based on normal commercial

² See Memorandum to the File from Blaine Wiltse, Case Analyst, through Catherine Bertrand, Program Manager, New Shipper Review of Fresh Garlic from the People’s Republic of China: Verification of Shandong Chenhe International Trading Co., Ltd., dated June 16, 2008 (“Chenhe Verification Report”).

³ See Memorandum to the File from Paul Walker, Senior Case Analyst, through Catherine Bertrand, Program Manager, Verification of Jining Yongjia Trade Co., Ltd. and its supplier Jinxiang County Shanfu Frozen Co. Ltd., dated June 16, 2008 (“Yongjia Verification Report”).

⁴ The Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC, the Garlic Company, Valley Garlic and Vessey and Company, (collectively known as the “Petitioners”).

⁵ Jining Yongjia Trade Co., Ltd. (“Yongjia”), Golden Bird Trade Co., Ltd. (“Golden Bird”), Qingdao Tiantaixing Food Co., Ltd. (“QTF”), and Shandong Chenhe International Trading Co., Ltd. (“Chenhe”), collectively known as the “Respondents”.

considerations, or is atypical of the respondent's other sales of comparable merchandise, the sale may be considered non-*bona fide*.⁶ In the *Preliminary Results*, although there were concerns raised regarding the high price of Chenhe's single POR sale, the Department preliminarily determined that there was insufficient information on the record to conclude that the sale's price was aberrantly high. Therefore, the Department preliminarily found Chenhe's sale to be a *bona fide* commercial transaction and stated that these issues would be looked into in more detail after the preliminary findings.

Given the proprietary nature of the underlying data used to formulate the Department's analysis and determinations, please *see* the Chenhe Final BPI Evidence Memo⁷ for details of the proprietary data that supports the decisions contained herein.

Petitioners' Comments

In its July 9, 2008, case brief ("Petitioners' Case Brief"), the Petitioners argue that, taken together, Chenhe's behavior and the characteristics of the single sale under review demonstrates that the sale was not a *bona fide* transaction. The Petitioners assert that, while the Department preliminarily found that the price of Chenhe's sale in itself was neither dispositive nor indicative of a non-*bona fide* transaction, the Department failed to identify the inconsistency between the gross sales price and the entered value Chenhe originally reported for its single U.S. sale. Additionally, the Petitioners argue that Chenhe's sale was unrepresentative of other garlic sales during the POR from the PRC, inconsistent with the customer's purchasing patterns, sold in a quantity and for a price that is unusual for the wholesale market, and sold under an atypical circumstance and price. The Petitioners assert that the explanations provided by Chenhe and its customer of the unusual circumstances are inconsistent with the atypical nature of the sale and are not supported by substantial record evidence.

The Petitioners argue that the Department made material errors in its Chenhe Preliminary *Bona Fide* Analysis Memo and did not fully consider the arguments made in the Petitioners' Pre-Preliminary Results Comments, dated March 26, 2008. Specifically, the Petitioners claim that the Department did not identify the inconsistency between the gross sales price and the entered value Chenhe originally reported for its single U.S. sale. The Petitioners also allege that the Department did not recognize that Chenhe's sale had been entered under an incorrect HTSUS classification. The result, Petitioners state, was that the Department erroneously identified the product characteristics of the garlic subject to Chenhe's single U.S. sale and thus performed comparisons of the price and quantity of Chenhe's sale to entries of non-comparable merchandise. Petitioners contend that the Department also misstated that the quantity of Chenhe's sale was consistent with quantities shipped in a 20 foot container. *See* Petitioners' Case Brief at 4-6. The Petitioners contend that the Department would have found Chenhe's single U.S. sale to be a non-*bona fide* transaction in the *Preliminary Results* if the proper attention had been paid to these issues and arguments previously raised by the Petitioners.

⁶ *See Windmill International Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1307 (CIT 2002), *see also American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000).

⁷ *See* Memorandum to James Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Blaine Wiltse, Analyst, Regarding, Final BPI Evidence of Shandong Chenhe International Trading Co., Ltd.: New Shipper Review of Fresh Garlic from the People's Republic of China, dated September 19, 2008 ("Chenhe Final BPI Evidence Memo").

Furthermore, the Petitioners state that, in the Chenhe Preliminary *Bona Fide* Analysis Memo, the Department's analysis of Chenhe's third-country sales was at odds with the factual record. Among other arguments not discussed here due to their proprietary nature, the Petitioners claim that the Department mistakenly compared Chenhe's third-country sales to the erroneously reported entered value and not the gross sales price for Chenhe's U.S. sale. *See* Petitioners' Case Brief at 18. The Petitioners also maintain that there is no basis for the Department to consider Chenhe's sales to third countries when there exists an enormous pool of U.S. sales of subject merchandise during the POR against which to compare Chenhe's quantity and value terms for purposes of the Department's *bona fides* analysis. The Department does not have the discretion, the Petitioners assert, to examine third-country sales in the absence of comparable POR sales from other exporters operating under the same antidumping ("AD") order simply to justify a finding of *bona fide* when it has the ability to use these POR sales as a more accurate comparison and which clearly indicate the finding of a non-*bona fide* commercial transaction. *See* Petitioners' Case Brief at 19-20.

The Petitioners dismiss Chenhe's claims that "'CBP data on entered value is inherently unreliable for purposes of making any comparisons {sic}' between its entry and the hundreds of other POR entries of subject merchandise, because 'a large number of all Chinese exporters have artificially lowered entered value in order to avoid the necessity to pay large amounts of dumping duties'." *See* Petitioners' Case Brief at 16. Instead, the Petitioners argue, in a new shipper review, the importer has the incentive to commit fraud not by understating the entered value but instead by overstating the entered value so as to obtain a 0 percent cash deposit rate. *Id.* For this reason, the Petitioners assert that the Department should compare Chenhe's gross price with the CBP data on entered values of other POR entries of subject merchandise.

The Petitioners also contend that, for the purposes of the Department's *bona fide* analysis, Chenhe sold garlic to its U.S. customer at an aberrational price and quantity in comparison to other entries of garlic. *See* Petitioners' Case Brief at 7-13; *see also*, Petitioners' Comments on CBP Data, dated September 4, 2008, ("Petitioners' CBP Comments"), at 3-4. Chenhe explained that an incorrect entered value had been reported to CBP upon entry, and that the correct entered value for Chenhe's single U.S. sale was the same as its reported gross sales price. Therefore, the Petitioners assert that the Department must use the reported gross sales price for Chenhe's single U.S. sale in its *bona fide* analysis for the final results. *See* Petitioners' Case Brief at 7. The Petitioners note that the gross sales price of Chenhe's single U.S. sale was higher than the average unit value ("AUV") for all other POR entries of fresh garlic from China while the quantity is significantly lower than the average quantity for all POR entries. *See* Petitioners' Case Brief at 13. The Petitioners also note that the price and quantity of Chenhe's sale to its U.S. customer differed from other entries of whole bulb garlic from China purchased by its U.S. customer during the POR. *See* Petitioners' CBP Comments at 3-4. These differences, the Petitioners assert, demonstrate that the price and quantity of Chenhe's sale are aberrational.

Additionally, the Petitioners argue that the U.S. customer of Chenhe's single sale responded to the Importer-Specific Questions contained in Appendix VII of the Department's Section C Questionnaire, and in so doing, put additional information on the record of this review regarding the U.S. customer's typical business practices. This information, the Petitioners argue, provides additional evidence that Chenhe's single U.S. sale was not a *bona fide* commercial transaction. The Petitioners contend that, first, the U.S. customer stated that it "imported the subject

merchandise” from two other exporters from China besides Chenhe and that its customers are “wholesalers of the subject merchandise.” *See* Petitioners’ Case Brief at 8. The Petitioners attest that it would be “extremely unlikely that Chenhe’s U.S. customer would have been able to find any produce wholesalers of fresh garlic imports from China that would have paid the U.S. customer such a premium over the prevailing prices at which vast quantities of Chinese garlic was then available in the U.S. market.” *See* Petitioners’ Case Brief at 12.

Furthermore, the Petitioners argue that Chenhe’s U.S. customer stated that the price it paid for Chenhe’s garlic was higher than the price it paid its other Chinese suppliers “because of the fine quality and large size of the product provided,” but the Petitioners contend that the size of the bulbs Chenhe sold to its U.S. customer is common for Chinese fresh garlic bulbs and there is nothing on the record of this review that would demonstrate this garlic was of a superior quality or otherwise entitled to a higher price. *See* Petitioners’ Case Brief at 10. Chenhe argues that its U.S. customer also stated that it paid Chenhe a higher price because it wanted to develop a good relationship with Chenhe and have the opportunity for future business with the company. *Id.* However, the Petitioners rebut that, at the time of the transaction, Chenhe’s U.S. customer was already being supplied with Chinese exports of fresh garlic by other companies and there is nothing on the record of this review to suggest that Chenhe could have offered its U.S. customer a comparable commercial relationship as those already provided by the other exporters. *See* Petitioners’ Case Brief at 11.

The Petitioners rebut Chenhe’s assertions that its sale is the only POR transaction whose price does not reflect the reported importer’s agreement to carry the related potential antidumping duty (“ADD”) liability, stating that Chenhe cites no record evidence that proves this broad claim. *See* Petitioners’ Rebuttal Comments on CBP Data, dated September 8, 2008, (“Petitioners’ CBP Rebuttal”) at 3. The Petitioners further state that, if Chenhe’s claim were true, the “outlier” nature of Chenhe’s sale would be further reason for the Department to find that sale as non-*bona fide*. *Id.* The Petitioners also argue that the record of this NSR does not contain any evidence to support Chenhe’s claims that its U.S. customer was willing to pay a premium to avoid ADD liability. *See* Petitioners’ CBP Rebuttal at 4. Rather, the Petitioners argue that the “premium” concept is a “concoction created to cover the inconvenient truth that the parties agreed to an inflated, commercially-unreasonable sales price to ensure that it would yield a 0 percent duty deposit rate at the conclusion of this review.” *See* Petitioners’ CBP Rebuttal at 5.

The Petitioners also argue that the Department has consistently declined to adjust U.S. price based on the costs of financing ADD, and Chenhe has failed to cite any basis within AD law or the Department’s regulations that would allow an adjustment to its price based on this argument. *See* Petitioners’ CBP Rebuttal at 5. The Petitioners cite to the Department’s ruling that, “The Department has long maintained, and continues to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that should be deducted from U.S. price.”⁸ *See* Petitioners’ CBP Rebuttal at 6. The Petitioners further state that, even if the Department allowed adjustments to U.S. price based on ADD liability, Chenhe uses a flawed methodology for

⁸ *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585, 20594 (April 27, 1998) at Comment 14; *see also Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12782 (March 16, 1998) at Comment 22.

valuing the potential adjustment. Specifically, the Petitioners assert that Chenhe's calculation of the costs related to financing the ADD deposit failed to include the fact that if the sale were found to have not been dumped, then Chenhe would receive back not only the amount of its original deposit but also the interest that accrued on the deposit between the time of its entry and liquidation. *See* Petitioners' CBP Rebuttal at 5. The return of the deposit with interest, the Petitioners argue, would refund Chenhe most, if not all, of the ADD liability and, therefore, makes Chenhe's claims that the risk premium built into the price of its sale was equal to the costs of financing the cash deposit to be inaccurate. *Id.*

The Petitioners rebut Chenhe's claim that for all POR entries of subject merchandise the entity designated as "importer" bore the ADD liability because, the Petitioners argue, this assumption counters Chenhe's other arguments regarding its U.S. customer's motivations for agreeing to pay a premium for Chenhe's sale. *See* Petitioners' CBP Rebuttal at 6-8. The Petitioners argue that if Chenhe's assumption were correct it would mean that its U.S. customer had made other purchases during the POR in which it did not pay the premium that Chenhe claims it was paid. The Petitioners further state that if Chenhe's assumption were true then its U.S. customer "took on the ADD liability for *all* of the POR entries it made from exporters other than Chenhe, and thus has been and will be intimately involved in actions covered by the ADD order." *See* Petitioners' CBP Rebuttal at 7. If this were true, the Petitioners argue, it would mean that Chenhe's U.S. customer was actually actively involved in the ADD case through its imports from other exporters and not as Chenhe has insisted avoiding any involvement in this matter. *Id.*

Finally, the Petitioners rebut Chenhe's argument that its sale cannot be compared to other POR entries because these entries were dumped, stating that, even if this were true, it would not be a basis for finding Chenhe's sale *bona fide*. The Petitioners insist that Chenhe's argument that the AUVs of other POR entries of subject merchandise must be increased before being compared to the AUV for Chenhe's sale would, most likely, not be legal or possible given that the Department has not yet issued the preliminary results for the administrative review whose POR coincides with the POR for this NSR. *See* Petitioners' CBP Rebuttal at 8-9. The Petitioners state that the Department would not have any legal basis to apply the findings or dumping margins from the previously completed administrative review (POR: 11/1/05 – 10/31/06) to exporters in the current NSR (POR: 11/1/06 – 4/30/07), and due to this fact, Chenhe's arguments related to the question of other exporters' practice of dumping has no merit. *See* Petitioners' CBP Rebuttal at 9.

The Petitioners argue that all of the explanations offered by Chenhe and its U.S. customer as to why Chenhe's price is higher than the other POR entries of subject merchandise are unsatisfactory because there is no information on the record of this review that provides sufficient evidence to justify Chenhe's single U.S. sale's high price, its low quantity, or the atypical circumstances surrounding Chenhe's U.S. customer's motivations for entering into this transaction and, as such, the Department must consider these factors to be aberrant and find Chenhe's single U.S. sale to be a non-*bona fide* transaction.

Chenhe's Comments

In its July 16, 2008, rebuttal brief ("Chenhe Rebuttal Brief"), Chenhe dismisses the suggestion by the Petitioners that it has somehow misrepresented the facts of its POR sale and instead states that all the material facts and circumstances surrounding its sale to the U.S. have been verified by

the Department and are not in dispute. Chenhe states that its sale is a *bona fide* transaction because it was between unaffiliated parties following normal commercial practices, the timing of the sale is not suspect, the sale price and quantity reflect normal commercial practices, and the reluctance of the U.S. customer to provide additional information does not render the sale non-*bona fide*. Chenhe claims that the Petitioners' arguments have attempted to distort the evidence of the record, but the Department should reaffirm its decision in the *Preliminary Results* by finding Chenhe's POR sale to the United States to be a *bona fide* transaction.

Chenhe asserts that the exchange of emails and faxes between Chenhe and its U.S. customer, provides sufficient evidence of a commercially reasonable sale negotiated at an arm's length basis and supports a *bona fide* finding by the Department. Additionally, Chenhe claims that the circumstances surrounding the sale (*i.e.*, the terms of sale, the means of payment, the sales contract, invoice, shipment by ocean vessel, *etc.*) are consistent with normal commercial transactions. *See* Chenhe Rebuttal Brief at 6.

Chenhe argues that it should not be punished in this review for the reluctance of its U.S. customer to respond fully to the Department's questionnaire because, although Chenhe requested its U.S. customer to cooperate fully and was disappointed by its failure to do so, the U.S. customer's refusal to respond constituted a reasonable business decision to not become involved in an ADD proceeding. *See* Chenhe Rebuttal Brief at 9.

Chenhe claims that the reason for the low quantity of its shipment, when compared to other POR entries, was the desire to avoid higher antidumping duty liabilities, and thus, is not aberrational. Chenhe explains that, because of the Department's previous rulings that it is not an unreasonable business decision for an exporter to sell a small quantity shipment in order to limit its exposure to ADD liabilities when a company is participating in an ADD proceeding,⁹ the quantity of its sale should not be a justification to determine that Chenhe's sale is non-*bona fide*. *See* Chenhe Rebuttal Brief at 3. Additionally, Chenhe makes the argument that "until an exporter is able to obtain a dumping rate reflective of its own pricing practices, it is not prudent to enter multiple shipments of large commercial quantities in the U.S." *See* Chenhe Rebuttal Brief at 7. For these reasons, Chenhe claims that it is a sound business decision to enter a smaller quantity in its first shipment to the U.S. market so as to avoid high ADD liabilities and receive an appropriate rate before beginning larger and more frequent shipments.

Additionally, Chenhe argues that the quantity of its sale is commercially reasonable because it is similar to numerous other sales of subject merchandise during the POR that were less than 10,000 kg and others that were between 10,000-15,000 kg. *See* Chenhe's Reply to New Factual Information Place on the Record, dated September 3, 2008, ("Chenhe CBP Comments") at 5. Chenhe also states that the quantity of its single U.S. sale during the POR is also similar to sales that it has made to third countries. The quantity of its sale, Chenhe further argues, is consistent with other sales of less than container load quantities shipped from China to the U.S. during the

⁹ *See Certain In-Shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty New Shipper Review*, 73 FR 9993 (February 25, 2008) and accompanying Issues and Decision Memorandum at Comment 1; *Honey from Argentina: Final Results of New Shipper Review*, 72 FR 19177 (April 17, 2007) and accompanying Issues and Decisions Memorandum at Comment 1; *Floor-standing, Metal-Top Ironing Tables and Certain Parts Thereof from China: Final Results and Final Rescission, In Part, of Administrative Review*, 72 FR 13239 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 9.

POR. *See* Chenhe's Reply to Petitioners' September 4, 2008, Comments on New Factual Information Place on the Record, dated September 8, 2008, ("Chenhe's CBP Rebuttal") at 4.

Contrary to the Petitioners' claims, Chenhe asserts that its price was higher than the other POR entries of subject merchandise from China because of a critical difference in the sales terms between Chenhe's sale and those of other exporters. *See* Chenhe Rebuttal Brief at 11. Chenhe states that because it acted as the importer of record ("IOR") it assumed the complete responsibility for ADD and paid the 376.67 percent ADD cash deposit on its single POR U.S. sale. *See* Chenhe CBP Comments at 5. Therefore, Chenhe contends, the price of its sale includes these additions while the other POR entries do not include any ADD liability. *See* Chenhe CBP Comments at 6. Chenhe argues that its U.S. customer was willing to pay a higher price for the garlic it purchased from Chenhe because the U.S. customer had no ADD responsibility, and therefore, Chenhe charged a higher price because it assumed the risk of prohibitive ADD liability. *Id.* Chenhe goes further to assert that buyers who are not responsible for ADD will pay a premium for the product, and the premium paid by its U.S. customer is reflected in Chenhe's higher price when compared to the other POR entries of subject merchandise. *Id.*

Additionally, Chenhe argues that since its price includes the responsibility for the ADD and the other POR entries do not, in order to make a proper comparison between these prices it is necessary to increase the prices of the other POR entries by approximately 30 percent. *See* Chenhe Rebuttal Brief at 12; *see also* Chenhe CBP Comments 7-9. Chenhe claims that by doing this, the Department will be comparing "apples-to-apples" and will find that the Chenhe price is no longer the highest price of garlic imported during the POR but is well within the price range of all other entries. *Id.* Chenhe maintains that, contrary to being the highest sales price or an aberrational price, when the proper adjustments are made for ADD liabilities to the prices of other POR entries of subject merchandise, the prices of many other entries are higher than Chenhe's. *See* Chenhe CBP Comments at 8; *see also* Chenhe CBP Rebuttal at 3. Chenhe asserts that the simple fact that its price differs or exceeds the average does not constitute evidence that the price is aberrational or unrepresentative and that once the proper adjustments are made so that the price comparison no longer constitutes a "distorted comparison of two different data types,"¹⁰ Chenhe's price is well within the norm. *See* Chenhe CBP Rebuttal at 3.

Chenhe continues to dismiss the Petitioners' arguments that its price is "unusually high" by stating that, unlike many other sales in this POR, Chenhe's sale was not dumped and therefore has a higher price than other dumped entries. *See* Chenhe Rebuttal Brief at 12. Chenhe rebuts the Petitioners' comparison of its price with the two other exporters subject to the current review. Chenhe argues that because, in the *Preliminary Results*, the Department found that both of these exporters had sold subject merchandise to the U.S. at less than fair value, while Chenhe had not, it is inappropriate to compare the prices of these exporters' sales to that of Chenhe. *See* Chenhe Rebuttal Brief, footnote 12, at 12-13. Instead, Chenhe argues that it is a significant justification for the Department to find Chenhe's sales to be *bona fide* because its price is sufficiently high to avoid antidumping duty liability, and a finding otherwise would "pervert the purpose of the ADD law." *See* Chenhe Rebuttal Brief at 13.

¹⁰ *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005).

Finally, Chenhe argues that its third-country sales are comparable in both price and quantity to that of its U.S. sale. Chenhe goes on to further claim that the return on its U.S. sale was lower than that of some of its third-country sales because of the difference in sales terms between its U.S. sale and its other third-country sales. *See* Chenhe Rebuttal Brief at 13. Chenhe asserts that the Department should affirm its finding in the *Preliminary Results* that its single POR sale to the United States is a *bona fide* commercial transaction.

Department's Position:

Based on the totality of the circumstances as discussed below, for these final results, the Department has determined that Chenhe's single POR sale is not a *bona fide* transaction, and subsequently has rescinded the new shipper review with respect to Chenhe. Given the proprietary nature of the underlying data used to formulate the Department's analysis and determinations, please *see* the Chenhe Final BPI Evidence Memo for details of the proprietary data that supports the decisions contained herein.

It is the Department's practice to examine both the quantity and value of other POR entries of subject merchandise from the PRC as well as a respondent's sales to third countries, when available, in evaluating the price and quantity of a single POR sale for the purposes of the *bona fides* analysis. Additionally, the Department agrees with the Petitioners that in the *Preliminary Results* of this review, the CBP data on the record was flawed in that it had been gathered from the inappropriate HTSUS category 0703.20.0020: FRESH PEELED GARLIC, and thus the correct HTSUS category, 0703.20.0010: FRESH WHOLE GARLIC BULBS, was not used in our analysis. Thus, in the *Preliminary Results*, the Department based its decision on an analysis of Chenhe's sales to third-country markets, both during and after the POR, to determine whether its POR sale was in any way atypical of its own sales practices. *See* Chenhe Preliminary *Bona Fide* Analysis Memo.

The Department determined, in the *Preliminary Results*, that Chenhe's single POR sale was *bona fide* based only on its analysis of Chenhe's third-country sales' price and quantity. *Id.* However, after the *Preliminary Results*, it was revealed that Chenhe had misreported the entered value of its single POR sale, an error that impacted the Department's analysis of its third-country sales. *See* Chenhe Final BPI Evidence Memo. For these final results, consistent with our practice, the Department has also compared Chenhe's single POR sale of subject merchandise to all U.S. entries from the appropriate HTSUS subcategory found in the CBP data¹¹ that was placed on the record of this review after the *Preliminary Results*. With this data, as well as information gathered at verification, the arguments raised in the case and rebuttal briefs, as well as the comments and rebuttal comments on the CBP data, the Department now has a complete view of the circumstances regarding Chenhe's single sale during the POR. Thus, upon further review of Chenhe's third-country sales in the context of the correct entered value for its single POR sale, as well as the totality of other circumstances discovered by the Department through its analysis of the CBP data and parties' arguments, the Department has determined that the circumstances surrounding the single POR sale made by Chenhe were atypical, and therefore the sale was not a *bona fide* commercial transaction. The Department's decision to find Chenhe's single POR sale

¹¹ *See* Letter to All Interested Parties Regarding New Shipper Reviews of Fresh Garlic From the People's Republic of China, dated August 29, 2008.

non-*bona fide* is based on a combination of factors, including: its high price, its low quantity, and the fact that it was atypical of Chenhe's U.S. customer's normal commercial practices.

In conducting a review, particularly a review where a company's margin would be based on a single sale, the Department examines the price associated with the sale under review. The Department must determine if the price was determined based on normal commercial considerations and whether it presents an accurate representation of the company's normal business practices. If the Department determines that the price was not based on normal commercial considerations, or is atypical of the respondent's subsequent sales of comparable merchandise, the sale may be considered non-*bona fide*. See *Windmill International Pte.*, 193 F. Supp. 2d at 224; *Am. Silicon Techs.*, 110 F. Supp. 2d at 616.

For these final results, the Department compared the per-unit price for Chenhe's single POR sale with the AUV for all entries under HTSUS 0703.20.0010: FRESH WHOLE GARLIC BULBS, and found that the price of Chenhe's single POR sale was unusually high when compared to the weighted AUV of all other entries under this HTSUS subcategory. See Chenhe Final BPI Evidence Memo. The Department further notes that Chenhe's POR sale subject to this review was also atypical when compared to the AUV of Chenhe's third country sales. *Id.* Addressing Chenhe's argument that its U.S. customer was willing to pay a higher price because "of the fine quality and large size of the product provided," the Department has found no evidence on the record of this review that would suggest that the garlic sold by Chenhe is of a superior quality or larger size than what is commonly sold by garlic producers/exporters in the PRC, and therefore cannot use this claim to justify the higher price.¹²

With regard to Chenhe's argument that the Department should disregard CBP entry information for certain other PRC producer/exporters of subject garlic that are subject to the AD order, the Department finds no basis upon which to disregard average price and quantity information for other exporters/producers. Chenhe also argues that the sales terms of its single POR sale was the basis upon which the price of its sale was negotiated and agreed upon with its U.S. customer. However, there is no information on the record of this review that would corroborate this claim. Additionally, it is the Department's practice to not treat antidumping duties and cash deposits of antidumping duties as expenses that should be deducted from the U.S. price.¹³ Therefore, the Department disagrees with Chenhe's argument that in evaluating the price to its customer, the price should be adjusted downward to account for additional expenses it may have incurred with regard to these antidumping duties and cash deposits.¹⁴

¹² The Department is not drawing any adverse inference from the reluctance of Chenhe's U.S. customer to respond fully to the Department's questionnaire.

¹³ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585, 20594 (April 27, 1998) and accompanying Issues and Decisions Memorandum at Comment 14; see also *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764 (March 16, 1998) and accompanying Issues and Decisions Memorandum at Comment 22.

¹⁴ The Department also notes that there is no evidence on the record of this review supporting Chenhe's claim that its U.S. customer agreed to pay a higher price as a premium in exchange for Chenhe's agreement to act as the IOR and be responsible for the ADD liability.

Given the facts noted above, the Department also considered whether the single POR sale was representative of Chenhe and its U.S. customer's normal business practices or whether, based upon the circumstances surrounding the single sale, the sale was constructed solely for the purpose of obtaining a favorable dumping margin. Consistent with the Department's practice, and as affirmed by the Court of International Trade ("CIT"), the Department must evaluate the circumstances surrounding the sale, such that Chenhe does not unfairly benefit from an atypical sale, and obtain a lower dumping margin than the producer's usual commercial practice would dictate.¹⁵ In examining whether the sale was commercially reasonable, in addition to price, the Department also may consider, *inter alia*, factors such as the timing of the sale, quantity, sales terms, and other circumstances.¹⁶ The Department has also considered the U.S. customer's other purchases of the subject merchandise in determining whether the sale at issue was commercially reasonable.¹⁷

In the instant review, the Department finds that the quantity of Chenhe's sale was unusual, given that the POR quantity fell substantially below the average U.S. import quantities as well as the average import quantities for its U.S. customer. *See* Chenhe Final BPI Evidence Memo. The Department finds that, when compared to other entries of garlic from the PRC, the quantity of Chenhe's single sale is aberrantly low. Although the Department determined that the quantity of Chenhe's U.S. sale was within normal range when compared to its third country sales in the *Preliminary Results*,¹⁸ the Department notes that when the quantity of Chenhe's U.S. sale is compared to the average quantity of its third-country sales, the quantity is atypical. Thus, the Department finds that the quantity of the transaction as a whole was atypical, especially in light of Chenhe's quantity when compared to the average U.S. import quantities and the average import quantities for its U.S. customer.

Furthermore, in the instant review, the Department finds that Chenhe's sale to the U.S. during the POR was atypical for the U.S. customer. Both the quantity and price of Chenhe's sale were atypical of the other purchases of subject garlic made by Chenhe's U.S. customer during the POR. *See* Chenhe Final BPI Evidence Memo. Additionally, the sales terms of Chenhe's sale were atypical for its U.S. customer as well as in comparison to other entries of subject garlic during the POR. *Id.* For these reasons, the Department concluded that the circumstances of Chenhe's sale represented an atypical transaction that would not be repeated in future sales. *See Hebei New Donghua*, 374 F. Supp. 2d at 1342 ("[T]he bona fides analysis encompasses factors beyond price to assess whether the sales(s) under review are indicative of future commercial behavior.").

¹⁵ *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d, at 1337 (CIT 2005) ("*Hebei New Donghua*") (citing *Windmill International Pte.*, 193 F. Supp. 2d at 1303, 1307; and *Am. Silicon Techs.*, 110 F. Supp. 2d at 992, 995).

¹⁶ *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ *See Honey From the People's Republic of China Final Results and Rescission, In Part, of Aligned Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 42321 (July 21, 2008) and accompanying Issues and Decisions Memorandum at Comment 1.

¹⁸ *See* Chenhe Preliminary *Bona Fides* Analysis Memo.

The Department finds that this sale does not provide a reasonable or reliable basis for calculating an antidumping duty margin. Where a review is based on a single sale, exclusion of that sale necessarily must end the review. Taking into account all information contained on the record of this review, including information submitted after the *Preliminary Results*, and after fully considering all comments provided by interested parties, for these final results, the Department has reevaluated its *bona fides* analysis and finds that Chenhe's single POR sale is not *bona fide*.

Comment 2: Intermediate Input Methodology¹⁹

According to Yongjia, the use of the intermediate input methodology has become a general practice in garlic reviews but it is contradictory to section 773(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), which requires the Department to determine the normal value ("NV") of the subject merchandise based upon the value of all factors of production ("FOPs") used to produce the subject merchandise. Yongjia contends that the intermediate input methodology, as laid out in *Fish Fillets*, is the exception to valuing NV, and not the rule.²⁰ Yongjia notes that in *Fish Fillets*, the Department clearly articulated two exceptions to the standard FOP analysis: (a) where a respondent reports factors used to produce an intermediate input that accounts for a small, or insignificant share, of total output and the increased accuracy in the overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so; and, (b) where it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. *Id.* Yongjia also notes that in previous garlic reviews the Department has stated that, should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow the Department to establish the completeness and accuracy of reported FOPs, the Department will revisit the issue of the intermediate input methodology and consider whether to use respondents' reported FOPs in the calculation of NV.²¹

Yongjia argues that it provided books and records with sufficient detail to substantiate and report accurate FOPs. Yongjia further argues that at verification the Department found no discrepancies in Yongjia's books and records. According to Yongjia, although its production activities take place through various stages throughout the year, it is possible to reconcile its books and records. Thus, Yongjia argues that the Department should not have used an intermediate input methodology in the *Preliminary Results* and should have instead relied on Yongjia's farming FOPs because they were fully and accurately reported.

¹⁹ Yongjia also submitted a general comment on the PRC garlic industry without making any argument. See Yongjia's case brief at 1-2.

²⁰ Yongjia relies upon *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4993 (January 31, 2003) ("*Fish Fillets*").

²¹ See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006) ("*10th Garlic Final*") and accompanying Issues and Decisions Memorandum at Comment 1.

Labor

Regarding labor hours, at the outset Yongjia notes that the Yongjia Verification Report²² states that there were no discrepancies between its original labor records and what Yongjia reported in its questionnaire responses. *See* Yongjia Verification Report at 14. Yongjia asserts that the timed harvest verification hours were greater than the reported harvest hours because, normally, the garlic is allowed to dry in the field before the roots are trimmed and the stems are cut. In addition, Yongjia contends that attendance times are recorded on the first page of the labor verification exhibits and on no others because the attendance hours were the same. *See, e.g.,* Yongjia Verification Report at Exhibits 12 & 13. Therefore, Yongjia argues it accurately reported its farming labor hours.

Yield Loss

Yongjia notes that the Yongjia Verification Report states that there were no discrepancies between Yongjia's yield loss records and what Yongjia reported in its questionnaire responses. *See* Yongjia Verification Report at 17-18. Yongjia argues that the Department's requirement for measuring yield loss from the point of harvest is unreasonable. According to Yongjia, the most accurate way to measure yield loss is after the garlic has been semi-dried and moved to a warehouse, which is the data Yongjia reported to the Department from its production records. Yongjia contends that it reported its yield loss in the exact manner required by the Department during the various processing stages.

Moreover, concerning cold storage yield loss, Yongjia maintains that it does not need to weigh the garlic before it enters cold storage because it knows that each cold storage bag holds 44 kilograms ("kg") of garlic. Thus, Yongjia argues that it need only record the number of bags entering cold storage times 44 to calculate the amount entered.

Electricity

Yongjia contends that it cooperated to the best of its ability in reporting its electricity consumption. According to Yongjia, the Department was unable to view its main electricity meter because this is located at the power substation owned by a local government agency, and not because Yongjia was unwilling to comply with the requests of the Department. In addition, Yongjia contends that it did not underreport its cold storage electricity allocation because it previously reported that it stored garlic for two individuals.

Off-Season Activities

Regarding off-season activities, Yongjia argues that its garlic crops do not benefit from any pesticide or herbicide left over in the ground. Yongjia asserts that the cotton grown in the off-season is a special kind of cotton which is resistant to pests and requires no pesticide. According to Yongjia, because there is a one month lag between the time the cotton is harvested and the garlic is planted, any pesticide or herbicide used would have lost its effect.

Water

Yongjia asserts that because water used for irrigation is free in the PRC, no water meter is required when Yongjia pumps water to irrigate its garlic crop. Yongjia contends that, in order to

²² *See* Memo to the File, through Catherine Bertrand, Program Manager, Office 9, from Paul Walker, Analyst, Office 9, "Fresh Garlic from the People's Republic of China: Verification of Jining Yongjia Trade Co., Ltd. and its supplier Jinxiang County Shanfu Frozen Co. Ltd.," dated June 16, 2008 ("Yongjia Verification Report").

cooperate with the Department, Yongjia reported the water pump capacity and the amount of fuel used to power the pump. Thus, Yongjia argues that the Department should not reject Yongjia's reported water FOP because it was based on an estimate.

Land Use

Yongjia argues that it provided the Department a hand-drawn map of its farm because there is no official map available at the county or village level in Shandong province. In addition, Yongjia argues that because the dimensions of its farm are listed on the lease agreement, the amount of land under cultivation has been reported to the Department.

Intermediate Product

Yongjia argues that the intermediate product used by the Department (*i.e.*, the whole bulb value form Azadpur APMC) is a finished product ready for consumption. Therefore, Yongjia contends that, should the Department continue to apply the intermediate product in this review, the Department should not include the surrogate financial ratio for overhead in the calculation of NV, because it would result in double counting.

The Petitioners did not comment on this issue in their case brief.

Department's Position:

For the final results, based on our examination and analysis of Yongjia's data, our findings in the *Preliminary Results*, our findings in the Intermediate Input Memo²³ and our findings in the Yongjia Verification Report, we continue to find that, based on the totality of circumstances, employing the intermediate input methodology to calculate Yongjia's NV is appropriate and produces the most accurate antidumping calculation.

The Department conducted a thorough analysis of Yongjia's reported FOPs and attached this analysis to the Intermediate Input Memo citing the issues of concern and noting where Yongjia's respective questionnaire responses supported our determination. Moreover, the Department conducted a "harvest" verification of Yongjia's FOPs where we reviewed records maintained by Yongjia and conducted on-site field tests and observed harvesting activities by Yongjia, noting several findings with respect to Yongjia's farming factors of production and yield loss which supported our findings in the *Preliminary Results* and the Intermediate Input Memo. As explained in detail below, we found that, consistent with prior review periods, Yongjia was unable to accurately track labor hours incurred for growing, tending, and harvesting activities and, thus, did not maintain appropriate records which would allow it to accurately quantify, report and substantiate this information. Further, we found problems with Yongjia's ability to report yield loss resulting from the shrinkage that occurs during the production of garlic due to the loss of water weight and the discarding of roots, stems, and skins during processing.

We note that garlic is a seasonal product that is grown and harvested at various points throughout a nine-month period. See Yongjia's August 22, 2008, Section D questionnaire response ("SDQR") at Exhibit Sup. D-1. Unlike other products which allow for multiple production

²³ Memorandum to James C. Doyle, Director, Office 9, from Paul Walker, Senior Case Analyst, Office 9, "New Shipper Reviews of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology," dated April 22, 2008 ("Intermediate Input Memo").

cycles to occur during a period of time, only one production cycle for garlic occurs over this nine-month period.²⁴ *Id.* The only way for the Department to verify all the farming labor usage rates is to be present for each stage of farming garlic, *i.e.*, planting, tending, and harvesting, as part of verification. Given the Department's resource constraints and the timing of the multi-staged production process, the Department conducted a harvest verification in order to observe as many farming activities and yield loss measurements as possible in the time allocated for verification. Thus, we find that the verification methodology used by the Department is reasonable given the Department's resource constraints and the garlic production cycle.

Moreover, we note that verification is an opportunity for the Department to test the accounting and business systems of a respondent to a level of detail that gives the Department a reasonable indication as to the integrity of the respondent's questionnaire responses. In the instant new shipper review, the Department conducted a harvest verification and found significant discrepancies between what Yongjia reported and what the Department observed. Thus, we determine that Yongjia maintains its books and records such that it does not report or account for all of the relevant information, *i.e.*, factors of production and yield loss, necessary to grow and harvest garlic, significantly inhibiting the Department's ability to analyze the reported farming and yield loss information. For more details *see* Intermediate Input Memo and Yongjia Verification Report.

We disagree with Yongjia's argument that the Department must value each and every FOP separately pursuant to section 773(c)(1) of the Act. Using the intermediate input methodology, as we did in prior reviews and in *Fish Fillets*, is consistent with section 773(c)(1)(B) of the Act because we valued Yongjia's reported FOPs. The alternative to the standard FOP analysis, as articulated in *Fish Fillets*, is only applied when the Department conclude that it simply is unable to apply the FOP analysis to a Respondent's overall reported data. The application of the intermediate methodology addresses the Department's concerns as to Yongjia's farming factor data, which still allows for the application of an FOP analysis under section 773(c)(1)(B) of the Act. The intermediate input methodology merely allows the Department to value the intermediate product (in this case the raw garlic bulb) *in lieu* of valuing the upstream inputs used to produce that intermediate product. Valuing the intermediate input in this way constitutes the "best available information," in accordance with section 773(c)(1)(B) of the Act. Accordingly, we calculated NV in this review by starting with the value of the intermediate product, and then adding to this value Yongjia's processing and packing costs. We then adjusted for processing yield loss, and in so doing, relied on the processing and packing FOPs, and yield loss figures, as reported by Yongjia. Thus, our calculation of NV is in accordance with section 773(c)(1)(B) of the Act.

Labor

With respect to farming labor, we note that our verification findings included major discrepancies between the farming labor reported and that observed during verification. The Yongjia Verification Report demonstrates that Yongjia underreported harvesting labor in excess of 15 percent. *See* Yongjia Verification Report at 14-16. We find this figure to be a conservative estimate for the reasons stated below. The harvest hours verified were observed

²⁴ We note that while planting and harvesting activities may generally be pre-scheduled, weather, soil conditions, and other factors beyond the companies' control may force a company to change that schedule. *Id.* at 45.

during June 2008, while the time period reported by Yongjia actually took place in May 2005, so we recognize that the observed time may differ slightly from the reported time because they reflect different growing seasons. However, the difference between the observed time and that reported by Yongjia should not be as great as that observed by the Department's verifiers, absent record evidence of radically different circumstances between the two periods. Yongjia contends that because the garlic was wet, this slowed the harvest workers' progress. However, we note that there is no record evidence supporting this assertion. Moreover, during verification we note that the timed workers harvested garlic under racing conditions and probably could not sustain the rate of speed at which they were working for much longer than the timing period, while other, untimed workers worked at a much slower pace. *See* Yongjia Verification Report at 15. In addition, the timed workers did not perform several tasks which were performed in May 2005, specifically, grading and sorting activities, setting bulbs aside for seed and clearing the field of stems. *Id.* Thus, because Yongjia was unable to accurately report its farming labor hours, we continue to find that we do not have the information necessary to accurately capture a proper farming labor FOP in Yongjia's margin calculations.

Yield Loss

With respect to yield loss, we agree that Yongjia accurately calculated its processing yield loss for fresh garlic using information kept in its normal course of business. However, Yongjia does not record the weight at all for the harvesting stage, obviating its ability to derive accurate yield loss figures for loss that occurred during the harvesting stage. Specifically, Yongjia does not record the weight of the garlic upon harvest. Instead, Yongjia records the weight of the harvested garlic (a) after it has been dried in the field, (b) sorted to remove bulbs which are small or damaged, (c) after the roots have been cut, (d) after the stems have been trimmed, and (e) after the garlic is sized, sorted to remove discolored bulbs and bagged. *See* Yongjia Verification Report at 12. Therefore, Yongjia does not follow the Department's yield loss methodology because Yongjia does not weigh the harvested garlic for several weeks after harvest. Thus, we continue to find that we do not have the information necessary to accurately capture a proper harvesting yield loss in Yongjia's margin calculations.

In addition, because Yongjia does not weigh the garlic before it enters cold storage, it is unable to accurately report the cold storage yield loss. Yongjia stated that it records the number of bags of garlic entering cold storage, assumes that each bag holds 44 kg of garlic,²⁵ and records the number of bags, times 44, to calculate the weight of the garlic entering cold storage. *See* Yongjia Verification Report at 18. Therefore, because Yongjia does not weigh the garlic as it enters cold storage, we also continue to find that we do not have the information necessary to accurately capture a proper cold storage yield loss in Yongjia's margin calculations.

Regarding Yongjia's argument that the Department's requirement for measuring yield loss from the point of harvest is unreasonable, as we noted in the *11th Garlic Final*:

we do not agree that we are creating overly burdensome, impossible or additional record keeping requirements. The purpose of our detailed analysis of each respondent's reported FOPs, as articulated in the Intermediate Product Memo and summarized above,

²⁵ We note that we were unable to test this assertion by Yongjia because the freshly harvested garlic had not been given sufficient time to dry. As noted above, before the garlic enters cold storage, it dries for several weeks, reducing the weight of the garlic. *See* SDQR at 48.

is to determine whether each respondent can substantiate its reported FOPs with its internal accounting records. Based on the analysis articulated in the Intermediate Product Memo and summarized above, we continue to find that in these reviews the respondents' books and records, as currently maintained, do not include the level of detail necessary to ensure this accuracy. However, as we stated in the Intermediate Product Memo, we will revisit this issue in future reviews and consider whether to use a respondent's reported FOPs in the calculation of NV if the respondent is able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of such reported FOPs.

See 11th Garlic Final at Comment 1.²⁶

Electricity

As noted in the "Yield Loss" Section above, Yongjia does not actually weigh the garlic before it enters cold storage, thus, the amount of garlic placed in cold storage is an estimate. Therefore, we find that the denominator of Yongjia's reported cold storage electricity FOP is unreliable. In addition, Yongjia's SDQR states that there are three electricity meters located at its facility, the general meter, one meter for construction and processing, and one meter for packing. *See* Yongjia's SDQR at 29. Yongjia states that the electricity usage for cold storage is derived from subtracting the construction and processing meter and the packing meter from the general meter. *Id.* At verification the Department discovered that the general meter, from which Yongjia calculated its cold storage electricity usage rate, was inaccessible to the verifiers. *See* Yongjia Verification Report at 19. Thus, because Yongjia was unable to accurately report the garlic stored in its cold storage facility and because we were unable to verify its main electricity meter, we continue to find that we do not have the information necessary to accurately capture a proper cold storage electricity FOP in Yongjia's margin calculations.

Off-Season Activities

The Department's concern regarding off-season activities, which may not have been properly accounted for in Yongjia's FOPs, was based on the known structure of the Chinese garlic industry and the understanding that non-garlic inputs can have an effect on garlic production. Thus, the reported upstream inputs used to produce the raw garlic bulb are not entirely accurate and do not account for off-season factors. Regarding Yongjia's argument that the cotton grown in the off-season is a special kind of cotton which is resistant to pests and requires no pesticide, we note that there is no record evidence concerning the type of cotton grown in the off-season, or whether this cotton is resistant to pests. Therefore, the factual information provided on the record by Yongjia, that it has no specific or detailed knowledge of the impact that residual inputs (*e.g.*, nutrients, pesticide, herbicide, water) from the off-season cotton crops produced on its leased land may have on the garlic crops, supports our decision that it is appropriate to calculate Yongjia's NV using the intermediate input methodology since it does not require that those inputs be accounted for. *See* Intermediate Input Memo at 5.

²⁶ *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) ("*11th Garlic Final*") and accompanying Issues and Decisions Memorandum at Comment 1.

Water

Regarding water usage, Yongjia's reported data are an extrapolation based on a formula that employs several assumptions. Based on the information provided by Yongjia in this NSR, we found that the reported water used for irrigation of the garlic crop was based on an estimate rather than actual water consumption. The estimated water usage is based on a combination of water pump capacity (*e.g.*, horsepower) and the amount of fuel used to power the pump (*e.g.*, diesel, gasoline, *etc.*). See Intermediate Input Memo at 5. Thus, Yongjia did not report its actual water usage.

Land Use

For land use, the record shows that Yongjia cannot accurately report the precise land area under cultivation for its leased farm. Specifically, while Yongjia reported the total land area under cultivation during the POR, based upon the hand-drawn map it provided, the boundaries of Yongjia's farm are difficult to ascertain. Moreover, we note that Yongjia's land lease agreement only specifies rough dimensions of the farm and does not specify the location of the farm plot, only the total area of land to be cultivated. See Intermediate Input Memo at 5.

Intermediate Product

The Trade Bridge Respondents²⁷ argue that the intermediate product in this case (*i.e.*, the raw garlic bulb) is subject merchandise, and therefore, overhead should not be applied. The Trade Bridge Respondents mischaracterize the raw garlic bulb as the subject merchandise exported to the United States. The following products which are imported into the United States are subject to this administrative review:

all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing.

As we noted in the *10th Garlic Final*, the raw garlic bulb which is harvested from the ground is not immediately shipped to the United States, but instead requires at least a minimum amount of processing and packing prior to export.²⁸ Thus, the garlic that is pulled from the ground is not the final product that is exported to the United States. Moreover, in the *10th Garlic Final* we found that the use of an intermediate input did not result in double-counting. See *10th Garlic Final* at Comment 1. Moreover, according to Azadpur APMC's website, the market's purpose is to safeguard the interests of wholesalers (sellers) and commission agents (buyers) by "eliminating various malpractices like under-weightment, short payment, delayed payments, unauthorized deductions and the indulgence of too many intermediaries." Therefore, we find that valuing the intermediate product with a surrogate value for a whole garlic bulb, rather than the Trade Bridge Respondents' reported upstream FOPs that go into producing that intermediate input, does not result in double counting.

²⁷ Golden Bird, QTF and Yongjia.

²⁸ See *10th Garlic Final* at Comment 2.

Comment 3: Surrogate Financial Ratios

Chenhe argues that for the final results, the Department should continue to use the 2004-2005 financial statements of the Indian tea producer Limtex India Limited (“Limtex”). Chenhe contends that Limtex is not an integrated tea producer, but is a tea processor, and therefore, its financial experience is comparable to that of the Respondents when the Department applies an intermediate input methodology. Chenhe notes that in past reviews the Department has found that Indian tea producers’ financial experience is representative of the Respondents’ financial experience because tea is not highly processed or preserved prior to its sale.²⁹ Chenhe also argues that, although Limtex’s financial statements are not contemporaneous with the current POR, the CIT has ruled that “contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI.”³⁰

Chenhe contends that the 2006-2007 financial statements of the Indian tea company Parry Agro Industries Limited (“Parry Agro”) reported that it grows over 75 percent of the tea it processes and, since Chenhe did not grow any of the garlic that it processes, Parry Agro’s financial experience would be an inappropriate comparison to Chenhe’s financial experience. *See* Chenhe Case Brief at 6. Additionally, Chenhe asserts that Parry Agro’s financial statements were skewed by the fact that 28 percent of its total income for fiscal year 2006-2007 was long-term investment income from which the expenses cannot be separate from the expenses incurred in the tea operations. *See* Chenhe Case Brief at 7. Finally, Chenhe argues that Parry Agro’s production process is more technical and machine-based than that of the Respondents. *See* Chenhe Case Brief at 8.

Chenhe states that the 2006-2007 financial statements of the India tea company Tata Tea Limited (“Tata Tea”) shows that it grows over 70 percent of the tea it processes and, since Chenhe did not grow any of the garlic that it processes, Tata Tea’s financial experience would be an inappropriate comparison to Chenhe’s financial experience. *See* Chenhe Case Brief at 9. Additionally, Chenhe asserts, the tea that Tata Tea produces comes in different varieties and value-added types that require higher levels of inputs than bulk tea. *Id.* Chenhe also contends that the Tata Tea financial statements are unreliable because the cost of green leaf produced and consumed on the company’s own estate was unascertainable which resulted in a substantial understating of the raw materials consumed by the company. *See* Chenhe Case Brief at 10-11. Finally, Chenhe argues that the processing operations of Tata Tea are more advanced than those of Chenhe, Limtex, and the other Respondents. This difference, Chenhe asserts, is evident by comparing the overhead and SG&A ratios of Limtex at 10.18 percent and Tata Tea at over 40 percent. *See* Chenhe Case Brief at 11.

Chenhe argues against the use by the Department of the 2006-2007 financial statements of Temptation Foods Limited (“Temptation”) because Temptation is a processor of frozen fruits and vegetables, which, Chenhe asserts, is a more complex process than the simple, manual processing performed on tea and garlic. *See* Chenhe Case Brief at 12. Chenhe also contends that

²⁹ *See Fresh Garlic from China: Final Results of the Eleventh New Shipper Reviews*, 72 FR 54896 (September 27, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

³⁰ *See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F. Supp. 2d 1264, 1275 (CIT 2005).

using the financial statements of Temptation to determine surrogate financial ratios would go against the Department's precedent of using financial statements from tea companies as those most comparable to the experience of garlic processors.

Although the Petitioners submitted the financial statements of Parry Agro, Tata Tea and Temptation for the Department's consideration, they submitted no comments on this issue in their case briefs.

Department's Position:

In the *Preliminary Results*, the Department based its calculation of the Respondents' overhead, selling, general and administrative expenses ("SG&A"), and profit on the 2004-2005 financial statements of Limtex. Subsequent to the *Preliminary Results*, the Petitioners submitted the financial statements of Parry Agro, Tata Tea and Temptation. See Petitioners' May 21, 2008 submission.

We note that in this review all Respondents' NV calculations begin with the intermediate product, the whole garlic bulb, *i.e.*, we have not used integrated FOPs in calculating NV for any Respondent in this review. Moreover, we note that no party has challenged the use of Limtex's financial statements for these final results. The Petitioners have placed on the record financial statements for two integrated Indian tea companies, Parry Agro and Tata Tea. Consistent with the *Preliminary Results*, and previous administrative and new shipper reviews, we continue to find that the tea industry is comparable and representative of the financial experience of the Respondents because tea, like the subject merchandise under review, is not highly processed or preserved prior to its sale. We note that in evaluating financial statements for use in calculating the surrogate financial ratios, it is the Department's preference to match the surrogate companies' production experience with Respondents' production experience.³¹ Thus, we continue to find that the non-integrated 2004-2005 Limtex financial statements are the best available information on the record to value overhead, SG&A, and profit, rather than the integrated financial statements of Parry Agro and Tata Tea.

Regarding Temptation, while we note that the statute does not define "comparable merchandise" in selecting surrogate values for overhead, SG&A and profit, the Department has considered whether the surrogate company's products have similar production processes, end-uses, and physical characteristics as the Respondents'. As noted above the Department has previously determined that tea production is similar to that of garlic.³² Moreover, there is no record

³¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(F); see also *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007) and accompanying Issues and Decision Memorandum at Comment 12.

³² See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004) and accompanying Issues and Decision Memorandum at Comment 6 (the Department determined that processing tea is more similar to processing garlic than mushroom producers because tea is not highly processed or preserved prior to sale); see also *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) ("⁹th Garlic Final") and accompanying Issues and Decision Memorandum at Comment 5 (the Department

evidence to support a finding that garlic processing is in anyway similar to processing frozen fruits and vegetables. Therefore, the Department finds no substantial evidence on the record to support a finding that that the application of the financial statements of Temptation would result in more accurate financial ratios.

Comment 4: Garlic Bulb Surrogate Value

A. Public Availability

The Trade Bridge Respondents note that, in accordance with section 351.408(c)(1) of the Department's regulations, the Department prefers surrogate values which are publicly available. The Trade Bridge Respondents argue that the Azadpur Agricultural Produce Marketing Committee's ("APMC") *Market Information Bulletin* ("*Bulletin*") data are not publicly available because the only way to obtain the data is to physically visit the market. The Trade Bridge Respondents assert that their attempts to obtain this data, through phone calls and e-mails, have been fruitless. According to the Trade Bridge Respondents, because certain information contained in the Petitioners' July 2007 Market Research Report concerning Azadpur APMC is double bracketed, interested parties are unable to verify this data. See Trade Bridge Respondents' submission dated July 8, 2008, at Exhibit 6 ("Market Research Report"). The Trade Bridge Respondents note that the APMC website does not contain information on grade-specific garlic. Therefore, the Trade Bridge Respondents argue that garlic bulb price data contained in the *Bulletin* are not available on the website, and therefore, not published or publicly available.

B. Product Specificity

The Trade Bridge Respondents argue that the Department has over-emphasized the importance of garlic bulb size in choosing a garlic bulb surrogate value. The Trade Bridge Respondents contend that other factors such as "natural endowment of the land, soil and climates; and the different output of agricultural products, when other conditions hold, determines local market prices." See Trade Bridge Respondents case brief at 6. According to the Trade Bridge Respondents, because the Department selected India as the surrogate country, the Department must compare garlic production in India versus the PRC. The Trade Bridge Respondents argue that the prices of Super-A ("SA") grade and "A" grade garlic rose between December 2006 and January 2007 due to local floods in India and the Department should consider this natural disaster and its impact on garlic prices when evaluating the garlic surrogate value. In addition, the Trade Bridge Respondents assert that China has a much higher production of garlic, and thus, lower prices than in India. Moreover, the Trade Bridge Respondents contend that indigenous Indian garlic tends to be smaller (10-40 mm) than Chinese garlic (40-60 mm). Therefore, the Trade Bridge Respondents argue that lower garlic production and scarcity of large bulbs in India leads to an overly high price of the larger bulb garlic in India.

The Trade Bridge Respondents contend that the size ranges of garlic bulbs found in the *Bulletin* are ambiguous. Specifically, the Trade Bridge Respondents note that the Petitioners' surrogate

found coffee production to be more complex than tea or garlic production because it involves varying processing methods, some which require using extensive machinery and water).

value submissions state that both A grade garlic and SA grade garlic are defined as garlic with a bulb size over 40 mm. According to the Trade Bridge Respondents, the Department's conclusion that SA grade garlic is over 55 mm is erroneous because relying on market research is insufficient and the Petitioners' market research report does not support this statement. Thus, the Trade Bridge Respondents argue that the Department should value garlic bulb using both A grade and SA grade garlic for sales of subject merchandise with sizes over 40 mm.

C. *Broad Market Average*

The Trade Bridge Respondents note that in 2005 garlic arrivals in Azadpur APMC, were 21,884 metric tons ("mt"), while arrivals in at key APMC's across India totaled 391,94 mt, thus, Azadpur APMC accounted for 5.58 percent of total garlic transactions in APMC markets across India in 2005. The Trade Bridge Respondents contend that these statistics are at odds with Azadpur APMC's statement that it is the largest terminal market for garlic in north India. Moreover, the Trade Bridge Respondents argue that there is no statistical evidence to support Azadpur APMC's statement that it is the largest fruit and vegetable market in Asia.

The Trade Bridge Respondents argue that the Azadpur APMC website makes no price differentiation between the grades of garlic and specifically SA grade garlic. The Trade Bridge Respondents note that the Petitioners' market researcher states that none of the APMCs visited by the researcher provided grade-wise prices, which is consistent with Azadpur APMC's website. Thus, the Trade Bridge Respondents argue that the difference in data reporting between the APMCs and the lack of evidence that grade-wise prices are a common commercial practice raise a reasonable doubt that the grading in the Azadpur APMC reflects a broad market average.

Further, the Trade Bridge Respondents argue that using only garlic from the Indian state of Himachal Pradesh would distort the surrogate value for garlic because this state only produces a small amount of the garlic sold in Indian APMCs.

D. *Contemporaneity*

The Trade Bridge Respondents argue that the surrogate value for SA grade garlic is not contemporaneous with the POR because SA grade values are missing from March 22, 2007, until the end of the POR. Thus, the Trade Bridge Respondents contend that SA grade values for 16.67 percent of the POR could not be taken into account. The Trade Bridge Respondents contend that this is unfair because the missing data are from a price valley of POR data. Therefore, to mitigate this incomplete data coverage, the Trade Bridge Respondents argue that A grade garlic be averaged with SA grade because there are data points for A grade covering the entire POR.

The Petitioners did not comment on this issue in their case briefs.

Department's Position:

Consistent with our finding in previous reviews, we find Azadpur APMC's *Bulletin* to be the best available information to value the garlic bulb input (the intermediate product) because it is specific to the product in question, represents a broad market average, contemporaneous, publicly available, and is tax and duty exclusive.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.³³ The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.³⁴ There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input.³⁵

A. *Public Availability*

Based on the record of this proceeding, we find the *Bulletin* to be publicly available. According to the Market Research Report, the Azadpur APMC data is published daily, posted in the APMC's facilities for public viewing, is electronically archived and is available upon request. We have in electronic form, *Bulletins* published for six months of the POR.³⁶ While we note that the *Bulletin* is not readily available on the internet, it is readily available to its intended public audience, wholesalers and buyers at Azadpur APMC in India. Moreover, the Department has reviewed the *Bulletin* price data and is satisfied that each day where data could have been available at the APMC, that data was submitted. Therefore, we do not find that public availability is at issue here with respect to the inaccessibility of a complete set of data.

We also disagree with the Trade Bridge Respondents' argument that the Azadpur APMC data is not publicly available because the sources of information, such as the Market Research Report, are treated as privileged. We note that the only information double-bracketed in the Market Research Report concerns the personal identity of the market researcher who compiled the report, and the name and designation of the sources. See Trade Bridge Respondents' July 8, 2008 submission at Exhibit 6. However, we note that the report does identify the organization that each of the sources represents, and all other information contained in the report is public. And, as noted above, the primary surrogate value source, the Azadpur APMC *Bulletin* data is available upon request from the APMC. In past cases, the Department has relied on surrogate value information gathered by market researchers. Moreover, the amount of double bracketing contained in the report is consistent with past segments of this order, and our practice in general,

³³ See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review*, 73 FR 34251 (June 17, 2008) ("12th Garlic Final") at Comment 2.

³⁴ See *Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

³⁵ See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

³⁶ We have *Bulletins* for every trading day and each *Bulletin* contains a header page and signature page.

when independent market researchers request anonymous treatment and provide an explanation for their request.³⁷

B. *Product Specificity*

In the *Preliminary Results*, we used prices for A grade and SA grade garlic to value Respondents' garlic bulb input. The *Bulletin* is published by the Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. For these final results, we continue to find that the *Bulletin* contains data which is the only information on the record of these reviews to value the input in question. The Department has concluded for the last several reviews that the vast majority of the evidence indicates that size of the garlic bulbs is given significant value in the marketplace.³⁸ Thus, the Department determined it is important to use surrogate Indian garlic values reflecting sales of garlic bulbs of similar diameter to that of the Respondents' merchandise during the POR.

In the most recently completed administrative review, and in the *Preliminary Results* of the instant review, we explained that we found the information contained in the *Bulletin* to be the most specific to the input in question because it provides a surrogate value based on bulb size. In the *Preliminary Results* we found that there are statements in the Foreign Market Research Report that provided clarification on the size ranges of A grade and SA grade garlic. Specifically, we note that the Foreign Market Research Report states that: bulb sizes above 55 mm would invariably be one of the newer clonal varieties classified as SA. *See* Trade Bridge Respondents' July 8, 2008, submission at Exhibit 6. Moreover, regarding the Trade Bridge Respondents' argument that indigenous Indian garlic bulbs are smaller than Chinese garlic bulbs, we note that page seven of the Foreign Market Research Report states that indigenous Indian garlic bulbs, of the SA grade, are produced in states other than Himachal Pradesh across northern India. *Id.* Thus, we find that Indian garlic bulbs are the same as Chinese garlic bulbs with regard to the size of the bulb. In addition, there is no record evidence concerning the effect that a local flood in India would have on national garlic prices. Therefore, because the Respondents have all reported sizes of 55 mm and above, and because bulb sizes that are 55 mm and above are typically classified as SA grade garlic, we have continued to value the whole garlic bulb using SA grade data from the *Bulletin*.

C. *Broad Market Average*

We find that data from the *Bulletin* represent a broad market average. In past cases, we have found official government publications to be reliable and credible sources of information.³⁹ We note that each *Bulletin* states that Azadpur APMC is an autonomous body of the government of

³⁷ *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ *See, e.g., 11th Garlic Final* at Comment 2.A; *see also, 12th Garlic Final* at Comment 2.A.

³⁹ *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

the National Capital Territory (“NCT”) of Delhi. In the *Preliminary Results*, we noted that the Azadpur APMC is the largest fruit and vegetable market in Asia and has become a “National Distribution Centre” for important Indian agricultural products, such as garlic.⁴⁰ Because the Azadpur APMC *Bulletin* is published by NCT, an Indian government entity, we find the *Bulletin* to be a reliable source of information for surrogate values. Therefore, we find Azadpur APMC’s claim to India’s agricultural “National Distribution Centre” and its claim to be the largest agricultural market in India to be reliable and credible.

When calculating surrogate values, it is the Department’s practice to use country-wide data instead of regional data when the former is available, and the CIT has affirmed this practice.⁴¹ Moreover, we attempt to find the most representative and least distortive market-based value because the more broad-based the value, the greater the likelihood that the value is representative.⁴² A careful examination of the *Bulletin* shows that agricultural products from all over India are sold at Azadpur APMC. Thus, we find that the *Bulletin* is a reliable and credible representation of a broad market average. In addition, we note that the data set used by the Department to calculate the garlic bulb surrogate value for SA grade garlic represents over 11 million kilograms of garlic sold from six Indian states.⁴³ Thus, we find that the *Bulletin* is a reliable and credible representation of a broad market average.

D. *Contemporaneity*

As noted above, the *Bulletin* is published by the Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. In addition, as noted above, we have in electronic form, *Bulletins* published for the entirety of the POR. Thus, because all data points used in the surrogate value for the garlic bulb are dated within the POR, we find the *Bulletin* data to be fully contemporaneous.

We disagree with the Trade Bridge Respondents’ argument that, because there were no SA grade garlic transactions from March 22, 2007, until April 30, 2007, at Azadpur APMC, the Department should average A grade with SA grade garlic to derive the garlic surrogate value. At the outset, we note that all SA grade garlic transactions which occurred during the POR are included in the Department’s garlic surrogate value.⁴⁴ Thus, there are no missing transactions, as

⁴⁰ The Azadpur APMC’s website is www.apmcazadpurdelhi.com.

⁴¹ See *Wuhan Bee Healthy Co., Ltd. v. United States*, 29 CIT 1275, 1277-78 (2005).

⁴² See *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People’s Republic of China*, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5.

⁴³ Because of our preference for country-wide data instead of regional data, when calculating the garlic surrogate value, we find it is more representative to include SA grade garlic transactions at Azadpur APMC from all states, and not limit the surrogate value calculation to SA transactions originating from Himachal Pradesh.

⁴⁴ A careful review of each *Bulletin* covering the POR shows that on each trading day there are transactions for varying grades of vegetables, including garlic, from different Indian states, *i.e.*, the *Bulletins* do not contain

the Trade Bridge Respondents have suggested. As stated above, the SA grade garlic surrogate value is publicly available, represents a broad market average, is specific to the input in question, and is fully contemporaneous with the POR. Thus, we find no reason to average the non-product specific A Grade garlic with the product specific SA grade garlic.

Comment 5: Placement of Mesh Bag in the Normal Value Calculation

The Trade Bridge Respondents argue that because the mesh bags used to pack the garlic are not an integral part of the subject merchandise, the Department should include mesh bags in the calculation for packing, and not in direct materials.

The Petitioners did not comment on this issue in their case brief.

Department's Position:

We agree with the Trade Bridge Respondents that the mesh bags used to pack fresh garlic are not a direct material, but a packing material, because mesh bags are not an integral part of the subject merchandise. Therefore, consistent with *Garlic NSR*, we have valued mesh bags as a packing material.⁴⁵

Comment 6: Containerization

The Trade Bridge Respondents contend that brokerage and handling fees cover relevant port fees, and thus, assert that containerization should be removed from the calculation of normal value.

The Petitioners did not comment on this issue in their case brief.

Department's Position:

A review of the Trade Bridge Respondents' margin programs show that containerization was not applied in their margin programs. Thus, we find the Trade Bridge Respondents' argument to be moot.

transactions for every grade of vegetable or garlic from every Indian state. Thus, there were no transactions at Azadpur APMC for SA grade garlic from March 22, 2007 to April 30, 2007.

⁴⁵ See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002) ("*Garlic NSR*") and accompanying Issues and Decision Memorandum at Comment 8 (the Department determined that certain packing materials which are not an integral part of the subject merchandise should be accounted for in NV as a packing material).

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

David Spooner
Assistant Secretary
for Import Administration

Date